

### REMARKS

The non-final office action that was mailed on 13 February 2009 rejected each of the pending claims 43, 44, 46, 49, and 52. Claims 55 and 57-63 are withdrawn from consideration pursuant to Applicant's election. Applicant has amended each of independent claims 43 and 52 to more particularly define the subject matter sought to be patented and to advance prosecution. The amendments add no new matter and are fully supported by the original specification (e.g., at FIG. 8; at page 5, lines 11-20, and at page 11, line 13 to page 12, line 15). Claims 43-44, 46, 49, and 52 remain pending. Applicant requests reconsideration in view of the amendments above and the following remarks.

#### Claim Rejection – 35 U.S.C. § 102

Claim 52 stands rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,551,309 to LePivert ("LePivert").

LePivert discloses a cryosurgical probe tip. *See* abstract. The probe tip includes two concentric layers, each having a set of apertures through a surface of the respective layer. *See* FIGS. 8-9, col. 6, lines 59-67. The layers can be rotated so that the apertures on each layer align to permit spraying of a refrigerant from the probe tip onto body tissue. *See id.*, abstract.

Amended claim 52 is patentable over LePivert because LePivert does not disclose or suggest a device that includes, *inter alia*, "a cryo therapy apparatus" "comprising a first balloon and a second balloon, the first and second balloons arranged to define an inner chamber and an outer chamber, at least a portion of the inner chamber being interior of the first balloon and at least a portion of the outer chamber being interior of the second balloon and exterior of the first balloon, a surface of the first balloon configured to retain a coolant within the inner chamber and a surface of the second balloon configured to retain the coolant within the cryo therapy apparatus if the first balloon fails and prevent loss of the coolant to the body of the patient."

By contrast, the concentric layers of the LePivert device include apertures through the layers, and thus the surface of each respective layer is not configured to retain coolant. Indeed, the purpose of the apertures is to allow dispensing a refrigerant from the device into a body of a

patient. In particular, LePivert's inner concentric layer includes a set of apertures 31, and the outer concentric layer includes a set of apertures 32, where the apertures 31, 32 pass completely through the surfaces of the respective layers. As such, the surface of LePivert's inner concentric layer is not configured to retain a coolant within an inner chamber of the device, as recited in claim 52, because of the apertures 31, and the surface of the outer concentric layer is not configured to retain the coolant within the device if the first balloon fails and prevent loss of the coolant to the body of the patient, as recited in claim 52, because of the apertures 32. Moreover, LePivert does not disclose or suggest a cryo therapy apparatus that includes first and second balloons, as recited in claim 52.

Neither is claim 52 obvious in view of LePivert, especially since the purpose of the LePivert device is to dispense refrigerant into the body of a patient. For example, implementations of the device of claim 52 may provide safety and cooling advantages not even contemplated by LePivert, such as preventing loss of coolant into the body if the first balloon fails. *See* Applicant's specification, page 12, lines 9-15.

For at least these reasons, claim 52 is patentable over LePivert. Accordingly, Applicant requests withdrawal of the anticipation rejection of claim 52.

#### Claim Rejections – 35 U.S.C. § 103

Claims 43-44, 46 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over LePivert in view of U.S. Patent No. 6,679,906 to Hammack et al. ("Hammack"). Of these, claim 43 is independent, and claims 44, 46 and 49 depend from claim 43.

Claim 43 directed to an a device for minimally invasive medical treatment, and has been amended in similar fashion to claim 52. Claim 43 is patentable over LePivert for at least the reasons discussed above with respect to claim 52, and Hammack fails to cure the deficiencies of LePivert. As such, claim 43 is patentable over LePivert and Hammack, whether alone or in combination, as are each of dependent claims 44, 46, and 49. Accordingly, Applicant requests withdrawal of the Section 103 rejections of claims 43-44, 46 and 49.

### **CONCLUSION**

Applicant submits that each of claims 43-44, 46, 49, and 52 are in condition for allowance, and requests that the Examiner issues a notice of allowance.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

This Submission is accompanied by a Three-Month Extension of Time and the required fee. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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